IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.Nos.280 to 282 of 2015

The Special Officer (Presently Managing Director),
Tirupattur Cooperative Sugar Mills Limited,
Kethandapatti - 635 815, Vellore District. ... Petitioner in all Wps'.

Vs.

1.The Joint Commissioner of Labour,
(Appellate Authority under the Payment of Gratuity Act 1972)
D.M.S.Compound, Teynempet,
Chennai - 600 006.

2.The Controlling Authority,
(under Payment of Gratuity Act),
The Assistant Commissioner of Labour - I,
D.M.S.Teynampet,
Chennai - 600 006. ... Respondent Nos.1 and 2 in all WPs'.

3.K.R.Perumal ... Respondent No.3 in W.P.No.280/2015

4.P.Padavattan ... Respondent No.3 in W.P.No.281/2015

5.N.Subramani ... Respondent No.3 in W.P.No.282/2015

COMMON PRAYER: Writ Petitions filed under Article 226 of Constitution of India praying to issue writ of Certiorari, calling for records culminating in the order of the first respondent dated 10.07.2014 made in P.G.Appeal Nos.3, 5 & 4 of 2014 respectively, on the file of the first respondent herein insofar as the respective 3rd respondent is concerned and quash the same.

For Petitioner :M/s.G.Thilakavathi
Senior Counsel
for Mr.R.Gopinath

For Respondents :Mr.V.Kadhirvelu
1&2 Special Government Pleader

For Respondent 3 :Mr.S.T.Varadarajulu

COMMON ORDER

These writ petitions are directed against the order passed by the Appellate Authority under the Payment of Gratuity Act, 1972.

2. The petitioner is a Sugar Mill. As per the order of the Government of Tamil Nadu, it is declared that Sugar industry is a seasonal establishment. The third respondent in all these writ petitions were engaged as Casual workers / NMR workers for the season and their Gratuities are calculated as per Proviso to Sub-Section (2) of Section 4 of the Payment of Gratuity Act, 1972. An employee who is employed in a seasonal establishment and who is not so employed throughout the year, the employer shall pay the gratuity at the rate of seven days' wages for each season. However, it is seen that by circular dated 25.07.1990 in Circular No.22452/E3/90 of Commissioner of Sugar, Madras, a decision was taken to pay gratuity at the rate of 15 days of wages per year of service to the 'seasonal' employees also, provided they complete 20 years of service in the Sugar Mills. In the instant case, it is an admitted fact that all the employees are put in more than 20 years of service. Therefore, considering all these facts, the Controlling Authority, the second respondent, has granted gratuity at the rate of 15 days of wages per season and the same was confirmed by the first respondent.

3. The learned Senior Counsel appearing on behalf of the petitioners / Sugar Mill vehemently contended that the Appellate Authority has passed all these orders without application of mind and without adverting to the Circular issued by the Director of Sugar, dated 20.08.1997, wherein the formula has been laid down, as per which, the employees who have put in 20 years of service both in regular and seasonal establishment will be entitled to gratuity of 15 days wages per year. Likewise, an employee worked for more than 240 days in regular or seasonal establishment, the gratuity will be calculated at the rate of 15 days wages per year. But, when a person who works as a seasonal employee and who was not working for more than 240 days will be paid gratuity at the rate of 7 days wages per year. The relevant

portion of the Circular dated 20.08.1997 of the Director of Sugar, Chennai, reads as under:

> "if a seasonal employee, has worked in the mills for 15 years and out of which for 10 years he had worked for less than 240 days per year, the gratuity will be calculated at the rate of 7 days wages per year and if he had worked for more than 240 days, for the remaining 5 years, the gratuity will be calculated at the rate of 15 days wages per year. In effect, he will be getting gratuity at the rate of 7 days wages per year for 10 years and 15 days wages per year for 5 years. As this is a statutory provision, gratuity should be calculated for all the cases of retirement, resignation, death or disablement due to accident etc., before and after the issue of the letter 3rd cited. The relaxation given in the letter 3rd cited, the employees who have worked alternatively as seasonal and regular employees and retired as seasonal employees are however applicable only to cases to death or retirement on or after 01.08.1993."

4. As per the above illustration, those who have retired before 01.08.1993, the concession granted by the Government by Circular dated 20.08.1997, will be paid as per the pro-rata basis, which is illustrated in the Circular. However, the said circular was not produced before the authorities below, at the time of consideration of these cases.

5. In fact, similar cases were taken on appeal before this Court by way of Writ Petition Nos.8928 of 2008, 28325 of 2008, 30116 to 30120 of 2013 etc. In all those cases, this Court had an opportunity to deal with Circular dated 25.07.1990 and 31.07.1991 and all those workmen who had put-in more than 20 years of service were directed to be paid gratuity at the rate of 15 days wages per year. In W.P.No.30116 of 2013, the writ petitioner has produced the circular dated 20.08.1997 and contended that the worker of a seasonal establishment is entitled to 7 days wages as gratuity and not more than that. However, this Court has refused to accept the contention in view of the judgment of the Division Bench of this Court in W.P.No.254 of 2013 wherein relief was granted in favour of workmen.

6. The learned counsel appearing for the third respondent would draw the attention of this Court that the circular dated 25.07.1990 issued by the Commissioner of Sugar has been

challenged before this Court in W.P.No.23808 of 2015 and it was stayed. The stay is still pending.

7. Be that as it may, the order passed in W.P.No.30116 of 2013 dated 21.01.2016 was taken on appeal before the Division Bench and Division Bench in Writ Appeal Nos.950 to 954 of 2016 dated 05.08.2016 has confirmed the order of the learned Single Judge. The workmen involved in all these writ petitions are also similarly placed and the judgment of Hon'ble Division Bench is squarely applicable to these cases also. In any event, any circular which is issued by the Government will not deprive the benefits given to the similarly placed persons.

8. As contended by Mr.S.T.Varadarajulu, learned counsel appearing for third respondent, the circular was not produced before the Appellate Authority and the Appellate Authority did not have any chance to apply his mind to the application of Sections 2 (A) and 4 of the Payment of Gratuity Act. In view of the orders passed in Writ Petition No.254 of 2013 and W.A.Nos.950 to 954 of 2016, I am inclined to accept the contentions of the petitioner. The order passed by the Appellate Authority has no valid ground to interfere with. Accordingly, all these writ petitions stands dismissed. No costs.

9. The learned Senior Counsel submits that they are already deposited the entire amount. In that event, the workmen are entitled to withdraw the deposited amount, by filing proper applications.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

Pns

To

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Chennai - 600 006.

2.The Controlling Authority,
(under Payment of Gratuity Act),
The Assistant Commissioner of Labour - I,
D.M.S.Teynampet, Chennai - 600 006.

+1cc to Mr.R.Gophinath, Advocate, S.R.No.16205
+1cc to Mr.S.T.Varadarajulu, Advocate, S.R.No.15737

W.P.Nos.280 to 282 of 2015

GPL(CO)
CB(18/05/2021)